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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 KEITH NASH,

10 Petitioner,

CASE NO. C10-5151RBL/JRC

11 v.

ORDER TO SHOW CAUSE

12 BETH GRAVES,

13 Respondent.

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16 This Habeas Corpus action filed pursuant to 28 U.S.C. 2254 has been referred to the
17 undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and
18 Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This petition addresses community
19 custody placement. Petitioner argues that when his community custody is revoked for a
20 violation and he is incarcerated, the time he spends on community custody tolls. He argues that
21 this practice is increasing the length of his sentence unconstitutionally. The court has reviewed
22 the petition and finds that Petitioner is currently raising these issues before the Washington State
23 Court of Appeals in a Personal Restraint Petition (Dkt. # 1, proposed petition, pages 5 and 6), but
24 according to Petitioner the matter is "still pending" before the Court of Appeals. Id.
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ORDER- 1

1 A federal habeas petitioner must provide the state courts with a fair opportunity to correct
2 alleged violations of prisoners' federal rights. Duncan v. Henry, 513 U.S. 364 (1995). In order
3 to bring the issue to this court, petitioner must have exhausted these claims at every level of
4 appeal in the state courts. Ortberg v. Moody, 961 F.2d 135, 138 (9th Cir. 1992). It is not enough
5 that all the facts necessary to support the federal claim were before the state courts. Id, *citing*
6 Picard v. Connor, 404 U.S. 270 (1971) and Anderson v. Harless, 459 U.S. 4 (1982). The state
7 courts must also be given the opportunity to rule before the federal court may rule on the
8 petition.

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10 Petitioner is ORDERED to show cause why this petition should not be dismissed without
11 prejudice prior to service. A response is due on or before **April 9, 2010**. Failure to file a
12 response will result in a Report and Recommendation that this petition be dismissed without
13 prejudice as unexhausted and for failure to comply with a court order.
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15 The clerk's office is directed to send a copy of this order to Petitioner and place the **April**
16 **9, 2010** due date on the court's calendar.

17 Dated this 9th day of March, 2010.

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21 J. Richard Creatura
United States Magistrate Judge
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